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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,278	01/04/2002	Yoshiharu Omura	771,057	6826

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,278

Applicant(s)

OMURA, YOSHIHARU

Examiner

James N Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “folding of the cut edge of the material back to said another end of said stay on tab,” as read from claim 6, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is unclear how the central portion of the stay-on tab is separated from the “another end” of the stay-on tab if they are to function integrally as a see-saw. Further, it is unclear exactly what the periphery of the central portion is.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the central portion of the stay-on tab is separated from the "another end" of the stay-on tab if they are to function integrally as a seesaw. Further, it is unclear exactly what the periphery of the central portion is. See paragraph 3 above.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Gomes 022.

Gomes 022 discloses a beverage can comprising a can having a cover comprised of a stay-on tab 1, the stay-on tab being attached to an upper surface 20 of the can cover by a supporting means 8 protruding upward from the can cover, the can cover being comprised of, under one end of the stay-on tab, scores 16 for inducing rupture, the one end of the stay-on tab being adapted to push downward a portion 18 surrounded by the scores so as to form a content take-out hole when another end of the stay-on tab is pulled upward, the supporting means being connected to a central portion of the stay-on tab, the central portion of the stay-on tab being continued to the one end 10 of the stay-on tab and separated from the another end 28 of the stay-on tab so that the another end can be pulled upward from the upper surface of the can cover

while the central portion remains in close contact with the upper surface of the can cover, wherein the one end and the another end of the stay-on tab are respectively inclined upward from the upper surface of the can cover so that there are distances between the one end of the stay-on tab and the upper surface of the can cover and between the another end of the stay-on tab and the upper surface of the can cover, the distance between the another end of the stay-on tab and the upper surface of the can cover being made larger when the one end of the stay-on tab is pushed downward toward the upper surface of the can cover.

Regarding claim 6, the stay-on tab of Gomes 022 appears to read on the present application to the best degree that the examiner understands the claim. Specifically, the stay-on tab has a region 30, which appears to separate the another end from the periphery of the central portion.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi 678.

Kobayashi 678 discloses a beverage can comprising a can having a cover comprised of a stay-on tab 1, the stay-on tab being attached to an upper surface 4 of the can cover by a supporting means 6 protruding upward from the can cover, the can cover being comprised of, under one end of the stay-on tab, scores 9 for inducing rupture, the one end 2 of the stay-on tab being adapted to push downward a portion surrounded by the scores so as to form a content take-out hole when another end 3 of the stay-on tab is pulled upward, the supporting means being connected to a central portion of the stay-on tab, the central portion of the stay-on tab being continued to the one end of the stay-on tab and separated from the another end of the stay-on tab so that the another end can be pulled upward from the upper surface of the can cover while the central portion remains in close contact with the upper surface of the can cover, wherein the one

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end and the another end of the stay-on tab are respectively inclined upward from the upper surface of the can cover so that there are distances between the one end of the stay-on tab and the upper surface of the can cover and between the another end of the stay-on tab and the upper surface of the can cover, the distance between the another end of the stay-on tab and the upper surface of the can cover being made larger when the one end of the stay-on tab is pushed downward toward the upper surface of the can cover.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2 and 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gomes 022 in view of Perry 721.

Gomes 022 does not disclose a polygon or elliptically-shaped rivet to prevent the stay-on tab from being turned in a horizontal direction or a can cover having wrinkles to prevent the can cover from being swelled upward by the expansion of the content of the can.

Perry 721 discloses an ovular-shaped rivet to prevent rotation of the stay-on tab (see col. 17, lines 31-32 where Perry states the ovular-shaped rivet prevents rotation of the tab) and also discloses wrinkles 956 in the cover to prevent swelling of the cover.

It would have been obvious to one having ordinary skill in the art to modify the cover of Gomes 022 to include the ovular-shaped rivet of Perry 721 so as to prevent rotation of the tab.

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Additionally, it would have been obvious to modify the cover of Gomes 022 to provide strengthening wrinkles for increased support of the can cover against expansion of the content of the can.

11. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi 678 in view of Perry 721.

Kobayashi 678 does not disclose a polygon or elliptically-shaped rivet to prevent the stay-on tab from being turned in a horizontal direction or a can cover having wrinkles to prevent the can cover from being swelled upward by the expansion of the content of the can.

Perry 721 discloses an ovular-shaped rivet to prevent rotation of the stay-on tab (see col. 17, lines 31-32 where Perry states the ovular-shaped rivet prevents rotation of the tab) and also discloses wrinkles 956 in the cover to prevent swelling of the cover.

It would have been obvious to one having ordinary skill in the art to modify the cover of Kobayashi 678 to include the ovular-shaped rivet of Perry 721 so as to prevent rotation of the tab. Additionally, it would have been obvious to modify the cover of Kobayashi 678 to provide strengthening wrinkles for increased support of the can cover against expansion of the content of the can.

12. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gomes 022 in view of Perry 721 as applied to claims 1, 2 and 5 above and in further view of Cudzik 750.

Gomes 022 does not show an auxiliary supporting means protruding upward from the can cover and being provided beside the supporting means wherein an upper end of the auxiliary supporting means is spread so as to form a head.

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Cudzik 750 discloses it is known to provide an auxiliary supporting means 52 protruding upward from the can cover and being provided beside the supporting means with an upper end of the auxiliary supporting means is spread so as to form a head.

It would have been obvious to one having ordinary skill in the art to modify the supporting means of Gomes 022 to further provide auxiliary supporting means with an upper end of the supporting means being spread to form a head so as to obtain the benefit of increased support between the tab and the can cover.

13. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi 678 in view of Perry 721 and in further view of Cudzik 750.

Kobayashi 678 does not show an auxiliary supporting means protruding upward from the can cover and being provided beside the supporting means wherein an upper end of the auxiliary supporting means is spread so as to form a head.

Cudzik 750 discloses it is known to provide an auxiliary supporting means 52 protruding upward from the can cover and being provided beside the supporting means with an upper end of the auxiliary supporting means is spread so as to form a head.

It would have been obvious to one having ordinary skill in the art to modify the supporting means of Kobayashi 678 to further provide auxiliary supporting means with an upper end of the supporting means being spread to form a head so as to obtain the benefit of increased support between the tab and the can cover.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,799,816 appears to disclose a stay on tab which reads on claim 6 to the best degree the examiner understands the claim.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.


Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/

JNS

December 23, 2002



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